




Headquarters Policy Flash

FLASH 2002-15

DATE: March 27, 2002
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: **Federal Acquisition Circular (FAC) 2001-06 and Notice of Proposed Rulemakings: 1) Miscellaneous Cost Principles; 2) Contract Terms and Conditions Required to Implement Statute or Executive Orders-Commercial Items; and 3) Prohibited Sources**

SUMMARY: This Policy Flash summarizes the items in FAC 2001-06, which was published in the Federal Register on March 20, 2002, at 67 FR 13048. Also, provided for your review are summaries of three proposed rules on varying topics published in the Federal Register on March 20, 2002, at 67 FR 13072, 67 FR 13076, and 67 FR 13080. Contracting personnel should review the details of each item in the full text of the FAC and the proposed rules.



FLASH 2002-15
(March 27, 2002)

A. Federal Acquisition Circular (FAC) 2001-06

The following eight items are in FAC 2001-06, which was published in the Federal Register on March 20, 2002, at 67 FR 13048. The effective date of each item is April 4, 2002. The FAC is available via the internet at <http://www.arnet.gov/far/facsframe.html>

1. Commercial Items SF 1449 (FAR Case 2000-012)

This final rule amends FAR Part 1, Federal Acquisition Regulations System, and Part 53, Forms. The rule makes several revisions to the Standard Form 1449, Solicitation/Contract/Order for Commercial Items, as follows:

- Addition of a block to indicate that the acquisition is set-aside for HUBZone;
- Substitution of the NAICS code for the SIC code;
- Notation that award is made only on the offeror's items specifically listed in block 29; and
- Addition of several blocks to the area of the form used as a receiving report by the Government.

2. Definitions for “Contract Action” and “Contracting Action” (FAR Case 2000-402)

The final rule amends FAR Part 1, Federal Acquisition Regulations System, Part 5 Publicizing Contract Actions, Part 6, Competition Requirements, Part 8, Required Sources of Supplies and Services, Part 17 Special Contracting Methods, Part 19, Small Business Programs, Part 32, Contract Financing, and Part 52, Solicitation Provisions and Contract Clauses, to provide for consistent use of the term “contract action” and makes administrative changes. This final rule-

- Changes the FAR throughout from the term “contracting action” to “contract action”; and
- Clarifies the text by making editorial changes.

FLASH 2002-15
(March 27, 2002)

3. Definitions for Sealed Bid and Negotiated Procurements (FAR Case 1998-024)

The final rule amends FAR Part 2, Definitions of Words and Terms, Part 3, Improper Business Practices and Personal Conflicts of Interest and Part 14, Sealed Bidding, Part 15, Contracting by Negotiation, Part 28, Bonds and Insurance, Part 35, Research and Development Contracting, Part 52 Solicitation Provisions and Contract Clauses, to clarify definitions that are used for sealed bid and negotiated procurements. The rule-

- ☞ Moves the definitions of “bid sample” and “descriptive literature” from FAR Part 14 to FAR 2.101, because these definitions apply to more than one FAR part, e.g., Parts 14 and 15;
- ☞ Amends the definitions of “bid sample,” “descriptive literature,” and “offer” to conform with the new definitions;
- ☞ Adds a new definition for “solicitation” at FAR 2.101;
- ☞ Provides definitions for “bid” and “bidder” in FAR Part 28 because, as used in that part, the terms address sealed bid and negotiated acquisitions; and
- ☞ Clarifies terminology used in FAR 15.201(f), 15.609(e), and 35.007(g) related to “offeror,” “prospective offeror,” and “potential offeror.” Where the term “prospective offeror” is used, it means an entity that is actively seeking a contract. Notwithstanding, these cites describe processes that ensure competition.

4. Procurement Integrity Rewrite (FAR Case 1998-024)

This final rule amends FAR Part 2, Definitions of Words and Terms, Part 3, Improper Business Practices and Personal Conflicts of Interest, Part 4, Administrative Matters, Part 9, Contractor Qualifications, Part 15, Contracting by Negotiation, and Part 52, Solicitation Provisions and Contract Clauses to rewrite the procurement integrity coverage in plain language. The final rule-

- ☞ Reemphasizes that FAR 3.104 implements prohibitions, restrictions, and other requirements of the Procurement Integrity Act that are placed on certain agency officials that participate in Federal agency procurements.

FLASH 2002-15
(March 27, 2002)

- ☞ Clarifies that other statutes and regulations also govern the conduct of Government employees while specific guidance at FAR 3.104 does not implement other statutes and regulations, it is very important that agency employees are aware of prohibitions and restrictions contained in these statutes and regulations that deal with the same or related prohibited conduct;
- ☞ Alerts agency officials that they should seek advice for agency ethics officials before engaging in certain activities that could have serious consequences, including criminal prosecution (see FAR 3.104-2(b), 3.104-3(c), and 3.104-5(a));
- ☞ Prohibits agency officials from taking part in a Federal agency procurement if engaged in certain conduct otherwise prohibited by other statutes and regulations irrespective of the officials' participation meeting the definition in FAR 3.104 of participating personally and substantially.

5. Acquisition of Helium (FAR Case 2000-008)

This final rule amends FAR Subpart 8.5, Acquisition of Helium, and the clause at 52.208-8 to implement the Helium Privatization Act of 1966 and associated changes to the Department of Interior final rule affecting the helium program. The rule-

- ☞ Changes the definitions;
- ☞ Eliminates the requirement for certain contractors and subcontractors to submit helium forecasts; and
- ☞ Establishes the requirement that contractors and subcontractors under contracts with a major helium requirement must report purchases of helium from Federal helium suppliers.

6. HUBZone Program Applicability (FAR Case 2001-003)

This final rule amends the FAR to simplify the existing language at FAR Part 12, Acquisition of Commercial Items, Part 19, Small Business Programs, and Part 52, Solicitation Provisions and Contract Clauses by expanding the applicability of the HUBZone Program to all FAR covered agencies.

FLASH 2002-15
(March 27, 2002)

7. Application of Labor Clauses (FAR Case 1999-612)

This final rule amends FAR Part 52, Solicitation Provisions and Contract Clauses, to clarify the application of labor clauses. The rule-

- ☞ Revises the clause at 52.213-4, Terms and Conditions-Simplified Acquisitions (Other Than Commercial Items), makes clear labor clause applicability below the simplified acquisition threshold.
- ☞ Revises the clause at 52.222-26, Equal Opportunity, to incorporate the exception for work performed outside the United States.

8. Technical Amendments (FAR Case 2001-06)

The final rule amends the FAR to update sections and make editorial changes at FAR Part 1, Federal Acquisition Regulation System, Part 5, Publicizing Contract Actions, Part 6, Competition Requirements, Part 9, Contractor Qualifications, Part 31, Contract Cost Principles and Procedures, and Part 52, Solicitation Provisions and Contract Clauses.

B. Notice of Proposed Rulemakings

The following items, Miscellaneous Cost Principles, Contract Terms and Conditions Required to Implement Statute or Executive Order-Commercial Items, and Prohibited Sources, were published in the Federal Register on March 20, 2002, at 67 FR 13072, 67 FR 13076, and 67 FR 13080, respectively. The proposed rules are available via the Internet at http://www.access.gpo.gov/su_docs/fedreg/a020320c.html

1. Miscellaneous Cost Principles

The proposed rule would amend the FAR to delete the cost principle concerning transportation costs, and revise the cost principles concerning cost of money, other business expenses, and deferred research and development costs. Comments on this rule are to be forwarded to the General Services Administration on or before May 20, 2002.

FLASH 2002-15
(March 27, 2002)

2. Contract Terms and Conditions Required to Implement Statute or Executive Orders-Commercial Items

This proposed rule would amend the FAR to update the clause regarding contract terms and conditions needed to implement statutes or executive orders under commercial items. The proposed rule-

- ☞ Removes clause 52.222-3, Convict Labor, from 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items, paragraph (a);
- ☞ Adds clauses 52.219-6, Notice of Total Small Business Set-Aside, 52.222-3, Convict Labor, 52.222-19, Child Labor-Cooperation with Authorities and Remedies, 52.225-16, Sanctioned European Union Country Services, 52.232-29, Terms for Financing of Purchases of Commercial Items, 52.232-30, Installment Payments for Commercial Items to 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items, paragraph (b); and
- ☞ Adds to clause 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items, paragraph (e), the clause 52.222-41, Service Utilization of Small Business Concerns.

3. Prohibited Sources


The proposed rule would amend the FAR to implement Executive Order 13192, Lifting and Modifying Measures With Respect to the Federal Republic of Yugoslavia (Serbia and Montenegro), and other Department of Treasury regulations that enforce economic sanctions imposed by the President of the United States. The proposed rule-

- ☞ Removes Serbia from the list of prohibited sources;
- ☞ Slightly modifies the restrictions relating to acquisition of supplies or services from Cuba, Iran, Iraq, Libya, North Korea, Sudan, and the territory of Afghanistan controlled by the Taliban;

FLASH 2002-15
(March 27, 2002)

- ☞ Requires authorization by the Department of the Treasury for any exceptions to these prohibitions, including purchases made overseas for the use overseas;
- ☞ Expands the prohibition against acquisition from entities controlled by the Government of Iraq or other specially designated nationals to include all blocked persons; and
- ☞ Provides the Department of Treasury website access to the list of Specially Designated Nationals and Blocked Persons.

Questions concerning this Flash should be directed to Denise Wright at (202) 586-6217 or via e-mail at denise.wright@pr.doe.gov


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Director

cc:
PPAG Members